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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,597	01/04/2002	Neal W. Luginbill	HRA-12807	6360
27505	7590	09/08/2005	EXAMINER	
RANKIN, HILL, PORTER & CLARK LLP 4080 ERIE STREET WILLOUGHBY, OH 44094-7836			CHIANG, JACK	
			ART UNIT	PAPER NUMBER
			2642	

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/037,597	Applicant(s) LUGINBILL ET AL.	
	Examiner Jack Chiang	Art Unit 2642	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 2642

1. In view of the Appeal Brief filed on 6/8/05, PROSECUTION is hereby reopened.

Claims 1, 3-14 are pending.

CLAIMS

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 3-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Hirai et al. (US 6084963).

Regarding claim 1, Hirai shows a phone holder comprising:

An open topped outer member (10) that is secured to a support (col. 1, lines 5-6, col. 10, lines 59-60);

An open topped inner member (20a-20c) that is slidably received and secured to the outer member (10);

The outer member (10) is adapted to receive a phone having a first size (col. 1, lines 59-62, col. 7, lines 11-13, col. 5, lines 30-35) when the inner member is removed;

The inner member (20a-20c) is adapted to receive a phone having a second size (col. 5, lines 15-20).

Art Unit: 2642

The front wall of the inner and outer members have an elongated opening through which a front of the phone is visible (see 10, 20 in figs. 6-7, see also figs. 8-9).

4. Claims 7-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hirai et al. (US 6084963) in view of Troy (US 5556017).

Regarding claim 7, Hirai shows a phone holder assembly comprising:

A penal assembly (col. 10, lines 59-60);

An open topped outer member (10) that is secured to a support (col. 10, lines 59-60);

An open topped inner member (20a-20c) that is slidably received and secured to the outer member (10);

The outer member (10) is adapted to receive a phone having a first size (col. 1, lines 59-62, col. 7, lines 11-13, col. 5, lines 30-35) when the inner member is removed;

The inner member (20a-20c) is adapted to receive a phone having a second size (col. 5, lines 15-20).

Hirai differs from the claimed invention in that it does not explicitly mention that the penal assembly is pivotally movable between a closed position and an open position, in which the panel is disposed "generally" vertically in the closed position.

However, Troy shows a penal assembly (54, 54') which is pivotally movable between a closed position (54') and an open position (54), in which the panel is disposed "generally" vertically in the closed position.

Art Unit: 2642

Hence, it would have been obvious for one of ordinary skill in the art to modify Hirai with a pivotal panel as taught by Troy, such that the modification allows the system to be stored in a storage bin when not in use (col. 1, lines 30-32 in Troy). Furthermore, Examiner takes Official Notice that a holder (cup or phone holder) may be in a vertical position when closed and an example of this is the airplane tray, which includes a cup holder, is closed in a vertical position.

Regarding claims 3-6, 8-14, Hirai or the combination of Hirai and Troy shows:
the inner and outer members (10, 20) having an opening on the bottom wall (bottom openings for the connector 40 in fig. 3);
the inner member (i.e. 103) can have ears (i.e. 124, 122) that are snap fit through openings (125, 121) in the outer member (102);
ribs and slots (146, 148, 150);
the upper peripheral rims for the inner and outer members (see opening top in fig. 1).


ARGUMENT

5. The Appeal Brief filed on 6/8/05 is moot in view of the new rejections.
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack Chiang whose telephone number is 571-272-7483. The examiner can normally be reached on Mon.-Fri. from 8:00 to 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ahmad Matar, can be reached on 571-272-7488. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2642

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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